

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

SYSCO FOOD SERVICES OF METRO
NEW YORK, LLC,

Plaintiff,

v.

JEKYLL & HYDE, INC.; and SIXTH
AVENUE FOOD SERVICES LTD,
Defendants.

Civil Case No. 08-cv-02958

JOINT PRE-TRIAL STATEMENT

Plaintiff, Sysco Food Services of Metro New York, LLC (“Sysco”), and Defendants, Jekyll & Hyde, Inc. and Sixth Avenue Food Services Ltd. (jointly “Defendants”) jointly submit this Pretrial Conference Statement pursuant to the Court’s Order.

A. Full Caption of the Action.

A full caption of this action is set forth above.

B. Name and Address of Trial Counsel.

The name and address of trial counsel is as follows:

Counsel for Sysco:

Melissa A. Peña
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Counsel for Defendants

Lawrence W. Rader
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C. Statement of Jurisdiction

This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(a), in that: (i) Sysco is a corporation organized and existing under the laws of the State of Delaware with a principal place of business at 20 Theodore Conrad Drive, Jersey City, New Jersey 07305; and (ii) Sysco contends that Defendants are New York corporations maintaining principal places of business at 1409 Sixth Avenue, New York, New York 10019 and 91 Seventh Avenue South, New York, New York 10014. The amount Sysco seeks to collect in this action as to each defendant is in excess of \$75,000.

Defendants contest that jurisdiction is proper over Sixth Avenue Food Services, Ltd. on the grounds that it is not an existing jural entity.

D. Statement of the Nature of Action and Summary of Defenses

This is a book account action. Sysco alleges that Defendants failed to pay for goods sold and delivered to Defendants. Sysco further alleges that defendant, Sixth Avenue Food Services, Ltd. is the alter ego of Jekyll & Hyde, Inc. Defendants contend that Sysco has billed and sued incorrect entities and has generally misapplied charges and credits among Defendants and other entities such that the exact amount due, if any, is not correctly stated in this action.

E. Trial by Jury or Non-Jury.

Sysco has not demanded a jury trial for this matter. Defendants have demanded a jury trial. Approximately five (5) days will be needed for the trial.

F. Stipulations of Agreed Facts or Law.

Sysco shipped goods to Defendants at the following addresses: 1409 Sixth Avenue, New York, New York 10019, 91 Seventh Avenue South, New York, New York 10014 and 182 West 4th Street, New York, NY 10014. There are unpaid invoices due and owing to Sysco for

goods shipped and delivered to such addresses. Sysco and Defendants do not agree on the amounts owed on such invoices.

G. Witnesses

Sysco will present the following witnesses in person at trial:

Charnelle Harvey, Director of Credit for Sysco.

Defendants will present the following witnesses in person at trial:

Donald R. Finley, President of Jekyll & Hyde, Inc.; and
Glenn Falcone, Director of Operations of Jekyll & Hyde, Inc.

H. Deposition Testimony

Sysco will offer the following deposition testimony:

- Jekyll & Hyde, Inc. operated from property located at 91 Seventh Avenue South, New York, New York 10014 (the “Seventh Avenue Address”).
(Deposition of Donald Finley, 11:22-25).
- Goods delivered to the Seventh Avenue Address are the responsibility of either Jekyll & Hyde, Inc. or Deacon Brody Management. (Id. at 40:16-17, 41:19-23 and 42:1-14).
- Jekyll & Hyde, Inc. owes money to Sysco for goods delivered. (Id. at 43:17-44:3).

I. Exhibits

Sysco shall rely upon the following exhibits:

Credit Application for Jekyll & Hyde, Inc.

Credit Application for Sixth Avenue Food Services, Ltd.

Sysco’s Account Statement for Amounts Owed

Records of Payment

Correspondence between the parties

Sysco's Invoices and Delivery Receipts

Defendants shall rely upon the following:

Invoices

Correspondence between parties

Records of payment

Dated: New York, NY

May 31, 2011

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